IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 4518 OF 2005

Puroshattam Murlidhar Gund .. Petitioner

versus

Dattatraya Jagannath Gund ..Respondents

Mr.G.S.Godbole, Advocate for Petitioner

Mr.N.R.Patil, Advocate for Respondent nos. 1 & 2

p **CORAM : J.N.PATEL,J**

DATED : 25th July, 2006

ORAL ORDER :

1. The petition can be disposed of at the admission stage. Heard learned counsel for the petitioner. None is present for the Insurance Company.

2. The petitioner is the original claimant who has impugned the order dated 7th October, 2004 passed

by the Chairman, M.A.C.T.Solapur rejecting the application of the petitioner for converting his claim petition which was filed under section 166 of the Motor Vehicle Act, 1988 to one under section 163-A of the said Act by placing relevant decision rendered by the Supreme Court in the case of Oriental Insurance Co. Ltd vs Hansrajbhai V.Kodala & ors reported in 2001, ACJ 827.

3. Contention of the learned counsel for the petitioner (original claimant) was that the order came to be passed when the counsel for the petitioner was not present and therefore, subsequently an application for review of the said order was filed which came to be rejected by the M.A.C.T.Solapur on 17th February, 2005 by observing that the review application is not maintainable, hence it is dismissed.

4. Learned counsel for the petitioner has pointed outto this Court that the order is assailed on two counts. First that the order dated 7th October, 2004 in which the learned Chairman, M.A.C.T. Solapur rejected his application for conversion of the proceedings under section 166 of the Motor

Vehicle Act, 1988 to one under section 163-A and then when a review was sought, it came to be dismissed on the ground that it is not maintainable. It is submitted that there is no bar under the Motor Vehicle Act, 1988 to convert the claim petition which is initially filed under section 166 of the Motor Vehicle Act, 1988 to one under section 163-A of the said Act and the judgment in Oriental Insurance Co. Ltd case along with other judgments was referred to a larger bench of the Supreme Court and in the case of Deepal Girishbhai Soni & ors vs United Insurance Co.Ltd, a three Judge bench of the Supreme Court has held that there is no bar to entertain such an application.

5. In view of this, the impugned order dated 7th October, 2004 as well as order dated 17th February, 2005 is quashed and set aside and the learned Chairman, M.A.C.T. Solapur is directed to hear the parties afresh and decide the application on its own merits keeping in mind the decisions rendered bythe Supreme Court in Deepak Girishbhai Soni case reported in AIR 2004 Supreme Court 2107.

6. Petition stands disposed of accordingly with no order as to costs.

(J.N.Patel, J)